

From: Carol Hills [cbhills@rcn.com]
Sent: Monday, December 15, 2003 12:18 PM
To: adoptionregs@state.gov
Subject: docket number State/AR-01/96



hagueregscarol.doc

Dear State Department,

Attached are my written comments on the proposed regulations for the Hague Convention on Intercountry Adoption. The format I have used in commenting is to list the particular paragraph in question, i.e. "96.36 Prohibition on child buying", followed by the word "Comments", followed by my comments. Paragraph title and "comments" are in bold for easier reading. I have pasted in my comments at the bottom of this email in case something goes wrong with the enclosure but the enclosure is much easier to read and preserves formatting and bold..

I know today is the deadline for you to receive these comments and I thank you for the opportunity to voice my concerns.

Best of luck coming up with the final wording of this important document.

Sincerely,

Carol Thurber
adoptive parent

P.S. I will send two hardcover copies of my comments under separate cover.

Comments from Carol Thurber, adoptive parent, sent by email 12/15/03

IV The Intercountry Adoption Act of 2000 (IAA)

B Overview of Substantive Provisions and E. Economic Impact/Effect on Small Entities

Comments: Making accreditation mandatory instead of voluntary and having a federal agency responsible for ensuring agencies are compliant is an important and generally positive development. What remains to be seen, and what the Hague Regs authors need to understand, is that it may be costly for agencies to get in compliance with accreditation requirements. How do they absorb these costs? The concern is that they will be passed onto adoptive parents making international adoption even more expensive than it already is.

It's unclear to me how costs of adoption will be lowered from 25% to as much as 80% of current costs..

. Subpart F--Standards for Convention Accreditation and Approval
Section 96.35: Suitability of Agencies and Persons to Provide Adoption
Section 96.43 Case Tracking, Data Management, and Reporting:
(Also appropriate for Ethical Practices and Responsibilities, 96.35
Comments: It is important that agencies are required to disclose if the particular agency has ever operated under a different name or if the principals used to work with different agencies. There are some cases of

unethical agencies relocating and setting up under a different name or the agency personnel opening up a new business--sometimes in the same town--under a different name. Somehow the Hague requirements must expose a complete paper trail not only of the agency but of the key names associated with it. Similarly, agencies sometimes use a facilitator who has been charged with unethical behavior in a particular country yet that facilitator's name is not made public on agency printed material or on their website and the facilitator just floats from agency to agency or operates under the radar.

-- Application Procedures for Accreditation and Approval

Section 96.40 Fee Policies and Procedures:

Comments: The issue of direct cash transactions by adoptive parents is a critical one. While this paragraph is referring to bureaucratic expenses (passports, visa fees etc.), the Hague regs must outlaw any direct cash transactions by adoptive parents to birth parents.. It is absolutely critical that no cash payments occur between adoptive parents and birth parents for any reason. If some payments are required for some expenses incurred by a birth parent, these must be paid to third entity, not the birth parent. If direct cash payments are allowed from adoptive parent to birth parent--for anything, i.e. pre-birth expenses, medical care etc., it opens the door to corruption, baby-buying and every other sort of unethical incentive. The Hague Regulations are an important start at creating standards and practices in international adoption but no US agency can control practices or habits in a second country.

Section 96.49 Provision of Medical and Social Information in Incoming Cases:

Comments: Can agencies be made responsible for administering basic testing, such as for HIV or Hepatitis B? Currently, the testing done by some countries is considered unreliable. One problem with medical information from sending countries is that it is up to adoptive parents to get a second opinion by physician in United States. This physician typically evaluates the medical information provided by an agency, the information--usually very basic--which has been by sending country. In some instances, parents have a physician evaluate a videotape or photo for signs of, say, fetal alcohol syndrome. Currently, this kind of additional check is up to parents to solicit and pay for. This scrutiny of the medical information provided by the sending country should be built into the adoption process with the adoption agency. It shouldn't be up to the initiative, access and imagination of the adoptive parent to get a physician to evaluate it. To enable parents to choose the physician they want to give an opinion, adoption agencies should list and describe this expense as one that adoptive parents should budget for (like travel and visas) and provide list of capable physicians around the country who specialize in interpreting medical information about children being adopted internationally. This kind of list could be easily pulled together, perhaps by a respected entity like Ethica. This need for a US-based physician to evaluate medical information should be part of adoption process and discussed between agency and adoptive parent, not left up to whim of adoptive parents.

13. Subpart M -- Dissemination and Reporting of Information by Accrediting Entities:

Comments: Whenever the Department or accrediting agency takes action against an agency (suspension, cancellation, refusal to renew, corrective action, etc.) this action must be made public on the State Department website. Prospective adoptive parents must be able to get up to date information about an agency and any action taken against the agency.

Financial Risk and Management
96.34 Compensation
Comments

d. The fees, wages or salaries must also be commensurate with the cost of living in sending country. A dollar goes a long way in many countries that are the source of babies and children adopted internationally. It makes corruption an ever-present danger.

Agencies must disclose to adoptive parents how agency determines that a child is a genuine orphan and are appropriate for placement with a family in another country.

96.36 Prohibition on child buying

Comments: The following language needs to be changed. "If permitted or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted as payment for the child or as an inducement to release the child."

Direct cash transactions by adoptive parents to birth parents simply cannot be allowed. It is fundamentally against the principles of the Convention, the two main ones being to ensure that intercountry adoptions take place in the best interests of children and that the Convention prevent the abduction, exploitation, sale or trafficking of children. Direct cash payments of any kind offers the possibility violating all those principles, despite the caveats written into the Hague Regulations. As stated many times throughout this document, neither the State Department nor agencies can control much of what goes on in sending countries. Any kind of direct payment, even if it's for pre-birth expenses, can be interpreted--and more importantly experienced by the birth parent--as an incentive, which is certainly not in the best interest of children. Any payments required for activities related to adoption must be made to a third party--the entity providing the service. It's absolutely critical that no cash exchange hands between the adoptive parent and the birth parent--or the agency and the birth parent. I can't state this strongly enough. The model of paying pre-birth expenses in domestic adoption is deeply controversial and many adoption professionals feel it is ethically flawed.

96.40 (3) Foreign country program expenses:

Comments: These expenses must be detailed. Foreign program fees vary wildly and it's not clear why. The need for transparency here is critical.

96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.

(these comments also applicable to 96.49 Provision of medical and social information in incoming cases)

Comments: Mandatory training for prospective adoptive parents is a welcome addition to the adoption process. I would add one thing however. Part of this training should be a mandatory discussion about why the particular child the parents are adopting is available for adoption. What steps were taken to determine that the baby/child is a true orphan, to reunify him/her with her biological family either immediate or extended. What information does the agency have about his/her birth parents? If they are known, can the adoptive parents meet them? Many times, adoptive parents are told a child is abandoned and no information is known about the birth parents. When the adoptive parents travel to the country to complete the adoption, they are given paperwork that includes information about the birthparent(s) which they were previously told was not available. This is confusing and unfair to both adoptive parents and the child being adopted as information about his/her birth family is something they have a right to know. The inconsistency around information about birth parents and why a child is available for

adoption is unacceptable. Some of this obfuscation may have to do with the US government definition of an orphan, which in turns determines whether a child/baby can get a visa but information about birth parents is critical for the child and the birth parents and part of any ethical adoption has to be a required conversation between agency and adoptive parents about why this child/baby is available for adoption. Currently, this conversation is not happening unless pushed by the adoptive parent.